Supreme Court, U.S.
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No. 04 - 1676

IN THE

SUPREME COURT OF THE UNITED STATES

GREGORY SHAWN MERCER,

Petitioner,

V.

WILLIAM ALOYSIOUS THOMAS, III, ET AL.,

Respondents.

On Petition For Writ of Certiorari
To The Court of Appeals of Maryland

SUPPLEMENTAL BRIEF

REPLY TO BRIEF IN OPPOSITION

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An intervenor should be permitted to intervene for Respondent Campbell as he has not filed a Petition or Conditional Cross-Petition. Case law exists for this situation: Hunter v. Ohio ex rel. Miller, 396 U. S. 879 (1969). Below, and as Petitioner's Reply to BG&E's Brief in Opposition (paragraphs #8 and #9), Petitioner clarifies what the intervenor Petition might state.

REPLY QUESTIONS PRESENTED FOR REVIEW*

6. Whether or not Maryland's contributory negligence common law was used to violate Campbell's 7th U. S. Amendment right to preservation of a jury trial *and Campbell's 14th U. S. Amendment right to due process / equal protection of the law*.

7. Whether or not any (including Maryland's *and West Virginia's*) common law of contributory negligence is unconstitutional.

* - Additions to questions #6 and #7 above (in *italics*) are explained below (See page RB-2 and RB-10).

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I. SUPPLEMENTAL BRIEF

A. On June 2, 2005, Petitioner filed a Motion for Clarification / Motion for Certification that Federal Questions were Raised and Decided in the Court of Appeals of Maryland (hereafter "COA"), Gregory Shawn Mercer v. William Aloysious Thomas, III, September Term 2004, Petition Docket No. 434. This document was denied without further explanation on July 18, 2005. The issue of Petitioner's elected trial by jury that was denied by the Circuit Court for Prince George's County was clearly before the COA. For whatever reason that the COA considered itself justified in denying Petitioner's jury trial, this federal question was raised and decided by the COA. This federal question deserved to be certified. Petitioner re-emphasizes his first question presented for review to this Court: Whether or not Maryland's highest court evaded federal claims in cases/appeals involving contributory negligence.

B. After a week to review his Petition filed June 13, 2005, Petitioner became aware of corrections or improvements that should be made to his Petition. A list of 16 corrections or improvements were mailed to each Respondent on June 21, 2005. Each Respondent received this list on June 22, 2005. The 16 corrections or improvements follow:

1) In the Table of Contents for both the Petition and the Appendices:

App. I should be dated October 12, 2004.
App. U should be dated November 3, 2004.

2) "169" is erroneous in the cite for Campbell v. BG&E, 331 Md. 196, 627 A.2d 538 (1993) on pages vi, ix, and App. 47.

3) In the Table of Authorities, page x, Harrison et al. v. Motgomery Board of Education et al. also appears on App. 112 and as Campbell's COA Petition paragraph H32.

4) In Constitutional and Statutory Provisions Involved, page 2, U. S. Constitutional Amendments are not given verbatim in any Maryland Court but referred to in the COSA and COA. See Petitioner's COA Petition paragraph H14 (App. FF at App. 110).

5) Petition, page 9, "(App. DD at paragraphs 6 & 7)" should be "(App. DD at paragraphs 6 & 7 or H2)".

6) Petition, pages 10, 22, and 23, Davis v. Dipino appears in Petitioner's COA Petition as paragraph H24.

7) In the Statement of Cases, Campbell v. BG&E, pages 16 - 19, it would be significant to mention that Campbell's attorney presented the Last Clear Chance defense to the CC judge while the jury was not present. The jury recognized the Last Clear Chance defense while the judge, despite Campbell's attorney's presentation, either missed or ignored the significance of the defense. Campbell's attorney's presentation of the Last Clear Chance defense

appears as Campbell's COA Petition paragraph **H18**.

8) Petition, pages 17, 18, and 24, Cohen v. Rubin appears as Petitioner's COA Petition paragraph **H28** and Campbell's COA Petition paragraph **H33**.

9) Petition, page 21, the first two sentences should be combined with a comma to eliminate a sentence fragment.

10) Petition, page 22, Furguson v. Cramer appears as Petitioner's COA Petition paragraph **H25**.

11) App. GG, page App. 113, "[38 years ..." should be "[39 years ..."

12) App. HH has the following case law in alphabetical order:

Alvis v. Ribar, 85 Ill.2d 1, 421 N.E.2d 886, 52 Ill. Dec. 23 (1981)
Bradley v. Appalachian Power Co., 163 W. Va. 332, 256 S.E.2d 879 (1979)
Goetzman v. Wichern, 327 N.W.2d 742 (1982)
Gustafson v. Brenda, 661 S.W.2d 11 (1983)
Hilen v. Hays, 673 S.W.2d 713 (1984)
Hoffman v. Jones, 280 So.2d 431, 78 A.L.R.3d 321 (1973)
Kaatz v. State, 540 P.2d 1037 (1975)
Li v. Yellow Cab Co., 13 Cal.3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858, 78 A.L.R.3d 393 (1975)
McIntyre v. Balentine, 833 S.W.2d 52 (1992)

Nelson v. Concrete Supply Co., 303 S. C. 243, 399 S.E.2d 783 (1991)
Placek v. City of Sterling Heights, 405 Mich. 638, 275 N.W.2d 511 (1979)
Scott v. Rizzo, 96 N.M. 682, 634 P.2d 1234 (1981).

13) England established Contributory Negligence common law in Butterfield v. Forrester, 11 East 60, 103 Eng. Rep. 926 (1809) and is available to Maryland citizens via Maryland Constitutional Declaration of Rights, Article 5(a). Butterfield appears as Petitioner's COA Petition paragraph **H26** and Campbell's COA Petition paragraph **H28**.

14) England established the Last Clear Chance defense to Contributory Negligence in Davies v. Mann, 10 Meeson & Welsby 546, 152 Eng. Rep. 588 (1842) and is available to Maryland citizens via Maryland Constitutional Declaration of Rights, Article 5(a). Davies appears as Petitioner's COA Petition paragraph **H27** and Campbell's COA Petition paragraph **H29**.

15) Petition, page 27, Irwin v. Spriggs which adopted Contributory Negligence common law in Maryland appears as Campbell's COA Petition paragraph **H30**.

16) N. C. R. R. Co. v. State. Use Price, 29 Md. 420 (1868) adopted Last Clear Chance defenses in Maryland and appears as Campbell's COA Petition paragraph **H31**.

II. REPLY TO BRIEF IN OPPOSITION

BY PARAGRAPH # FROM BG&E'S BRIEF

Cover) The cover states, "On Petition For Writ of Certiorari To The Court Of *Special* Appeals Of Maryland." However, since the COA made substantive rulings in *Appendices J & V* at App. 18 & 52, these Petitions for Writ of Certiorari are and would be to the COA (the state court of last resort) and not the COSA (which was not the state court of last resort - *Appendix F* at App. 9, paragraph 2).

Paragraph 1) The original Campbell v. BG&E Complaint was filed November 19, 1987 which was the 323rd day of 1987. The Campbell Complaint was the 51st case filed that day. The Campbell Case No. is 87 323 051.

Paragraph 3) Respondent BG&E received Petitioners list of 16 corrections and improvements to his Petition on June 22, 2005 (See page SB-2, #2). BG&E corrected the cite to Campbell v. BG&E, 331 Md. **196**, 627 A.2d 538 (1993).

Paragraph 5) Campbell filed a Notice of Appeal to the COSA on November 8, 2004 (*Appendix JJ* at App. 126). Campbell was scheduled to file a Brief of Appellant in the COSA on or before March 23, 2005. Between these two dates, Campbell filed a Petition for Writ of Certiorari to the COSA in the COA on December 2, 2004, the Petition was denied by the COA on December 23, 2004 (*Appendix V* at App. 52), Campbell filed a Motion for Reconsideration in the COA on January 21, 2005, and the Motion was denied